causes of action was pleaded and the defendant therefore had not an opportunity to negative the view that under one or other of these headings he might be liable. As I am clearly of opinion that he was not personally liable in debt, I gave the plaintiffs an opportunity to consider whether they wished to amend; they did not do so; possibly they felt that it was then too late.

I would add that it seems to me at least possible that the Government could sue either the Association or the Promoter, or perhaps both, together or successively, according to circumstances, though manifestly they could not recover the whole amount from both, and either might bring in the other as a third party. I think section 5 was intentionally enacted in very wide terms so as to leave several of these possibilities open.

The defendant also pleaded that the remedy of the Government was barred because the remaining funds of the Society are held by the Official Assignee, subject to the Bankruptcy law. This is correct up to a point but in my opinion the rules which confer and impose on the Official Assignee the powers and duties necessary to liquidate the Association do not incorporate the provisions of section 9(1) of the Bankruptcy Enactment (Cap. 55) which deprives creditors of all remedies except proof. In any event the bankruptcy of a principal debtor does not prevent the creditor from suing the surety or any other party who may be contingently liable. I think this plea is irrelevant to the plaint. The Government were not suing the defendant as the controller of the funds of the Association; they intended to sue, and did sue, him in his private and personal capacity. I can see nothing to prevent either the Government or the defendant from having recourse to the fund in the hands of the Official Assignee.

However that may be, I decide this case on the ground that in my view the duty is not explicitly charged on the private purse of the promoter and as this is the only cause of action pleaded the Government cannot succeed on this plaint. The costs must follow the event.

Order accordingly.

HURBAJAN SINGH v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Taylor, J.) March 21, 1952]

[Selangor — Criminal Appeal No. 28 of 1951]

Divorce — Personal law — Sikhs — Validity of divorce.

Among Selangor Sikhs divorce is recognised as a variation of Hindu law by usage or custom. A divorce by mutual consent, if evidenced in writing, sets the woman free to contract another formal and valid marriage.

Case referred to :—

(1) *In re Tan Soh Sim, decd.* (1951) M.L.J. 21.

CRIMINAL APPEAL.

R. P. S. Rajasooria for the appellant.

J. V. M. Shields (Federal Counsel) for the Public Prosecutor.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Taylor, J. : — This is a criminal appeal from a conviction by a Magistrate but the question to be decided is a question of the personal law of Sikhs. The history of the matter and the general principles have lately been restated by the Court of Appeal in *Re Tan Soh Sim*[1] The law relating to persons in this country deals with members of the different communities in much the same way as the law of England deals with persons domiciled outside England; questions of divorce, guardianship, and the like, are decided according to the law or custom of the community to which the parties belong.

The facts of the case are that the accused, who is a young Sikh, took away the recently married wife of another Sikh from Kuala Lumpur to Kelantan. Despite immediate complaint and vigorous enquiry the couple remained untraced for many months but eventually they were arrested and the accused was charged in the Magistrates' Court in Kuala Lumpur with enticing away a woman whom he knew to be married to another man.

At the trial it was, of course, necessary for the prosecution to prove strictly a valid marriage; they adduced a considerable body of evidence to show that the young woman, who is the daughter of a well known priest, had been publicly betrothed to the complainant at a ceremony at a Sikh temple in Kuala Lumpur and subsequently married to him at another public ceremony in a different temple. Ample evidence was given to show that the ceremonies were usual and appropriate to a valid marriage and there would have been no doubt, had it not also appeared that the girl had previously been married to a different man. It was therefore necessary for the prosecution to show that the previous marriage had been validly dissolved.

The fact of the divorce was established by calling the first husband and proving writings of divorcement, given to each spouse by the other; on the face of these documents it was a divorce *a vinculo*. The only remaining question was whether, according to the applicable law, such a divorce sets the woman free to remarry. The father of the woman concerned, who is a Sikh priest of long experience, cited a text writer in Gurmukhi in support of the view that such a divorce is valid and there was other evidence tending to show that such divorces are recognised locally. At the conclusion of the case for the prosecution the Magistrate found all the elements of the offence proved, except one. He acquitted the accused, without calling on him for his defence, on the ground that the second marriage was invalid. The reasons for this finding were not very clear; the Magistrate seems to have doubted the validity of the divorce but he made no explicit finding on that important point.

On appeal by the Public Prosecutor Mr. Justice Wilson held that the evidence was sufficient, if unrebutted, to show a valid divorce and remarriage; he accordingly remitted the proceedings to the Magistrate with directions to call on the defence and, having heard it, to decide the case.

At the resumed hearing an attack was made on the orthodoxy of the text-writer relied on by the expert witness. The trial digressed into religious controversy without ever coming to grips with the one question which mattered, namely, whether the passage on divorce was correct. None of the other points was further contested. The learned trial Magistrate rightly held that the defence had failed to rebut the prosecution case; he found the accused guilty and, taking into account the fact that he had been in custody for about three months, sentenced him to rigorous imprisonment for one month and a fine of $100.

The accused now appeals and the only issue still to be decided is whether the divorce was valid according to the law applicable to the parties. It is really a double issue. First — what is the applicable body of law? Secondly — what is the rule of that law applicable to the particular case? The applicable law is the law of the domicil of the first husband at the date of the alleged divorce. Where was he domiciled? Although the first husband gave evidence and both sides were represented by Counsel at every stage, not one question touching this vital point was ever put. The trial was conducted in a confusing manner. There was evidence of local usage and there were references to Indian authorities but there was never an attempt to shew which was applicable, or why.

Domicil is primarily a question of fact. It is not safe to assume that a member of any of the immigrant communities is domiciled locally, though a much larger proportion of them are domiciled here than was the case thirty years ago. At the present day, it is reasonable to assume that a Sikh belongs to a family originally domiciled in India but either his father or himself may have acquired a domicil of choice elsewhere. In the absence of any indication of association with another country the probability of his domicil being outside Malaya and India is so slight that it may be disregarded. Therefore, the law applicable to the first husband may fairly be taken to be either Indian law or local usage.

There was abundant material from which it could be inferred that the validity of divorce is recognised among the local Sikhs. The betrothal and marriage ceremonies were formal, public and largely attended; the woman's family are well known; it is highly probable that some, if not all, of the guests were well aware that the woman had been married previously; by countenancing the second marriage they plainly recognised the dissolution of the first. The President of one of the temples said that he had declined to give permission for the marriage ceremony because the notice was too short; it was never suggested that he would have refused on the ground that the woman was not free to remarry. After the first appeal the prisoner's solicitors made serious efforts to adduce further evidence; as no witness was called to say that the divorce was invalid, or incomplete, it is unlikely that any responsible member of the community could be found to testify in that sense. It follows that if the first husband was domiciled in Selangor, the divorce was valid.

As regards India, Counsel for the accused cited *Mayne* for the proposition, which I accept, that although marriage is absolutely indissoluble in strict Hindu law, divorce is recognised among Sikhs as a matter of local or special custom. If therefore the first husband were domiciled in India or Pakistan the validity of the divorce would still be decided according to the local usage.

For these reasons I am of opinion that the divorce was valid and the conviction must therefore be affirmed.

The offence is serious in itself and is specially likely to lead to breaches of the peace; imprisonment is therefore appropriate and would ordinarily be for a substantial term but in the special circumstances of this case the sentence imposed by the learned Magistrate was a proper one.

Appeal dismissed.

Re LEE CHAI KEE & CO.

[Orig. Civ. Juris. (Wilson, J.) March 21, 1952]

[Malacca — Bankruptcy No. 32 of 1950]

Bankruptcy — Deposit made under Remittance Shops Transactions (Stamp Duty) Regulations, 1948 — Claims of depositors.

Under the Remittance Shops Transactions (Stamp Duty) Regulations, 1948 a remittance shop paid in two sums as the deposit required under the law. A receiving order having been made against the firm an adjudication order was obtained against the sole proprietor.

Held, that the amount deposited as security must be paid to the Official Assignee and the claims of depositors of remittances through the firm whose commitments had not been discharged must be lodged with him.

BANKRUPTCY.

J. B. Prentis, Official Assignee in person.

P. G. Clough (Federal Counsel) for the Controller of Foreign Exchange and Accountant General, F.M.

The arguments appear sufficiently from the judgment.

Cur. Adv. Vult.

Wilson, J. : — The facts of this case are fully set out in the report of the Official Assignee dated 18th February, 1952. It is sufficient to say that on the 26th January, 1951, a Receiving Order was made against Lee Chai Kee & Company of 127, Sultan Street, Kuala Lumpur and that on the 24th August, 1951, an Adjudication Order was made against Lee Chai Kee, proprietor of the said company. Previous to the Receiving Order Lee Chai Kee have obtained a Remittance Shops permit under the Remittance Shops Transactions (Stamp Duty) Regulations, 1948. The footnote to the form of application contained in the Second Schedule to these Regulations is as follows :—

"Security of $10,000 in respect of an 'A' permit, or $2,000 in respect of a 'B' permit is required and may be applied to meet such of your commitments to your depositors as you may fail to discharge."

Lee Chai Kee made two deposits of $10,000 and $2,000, respectively, with the Bank of China, Kuala Lumpur, on the 13th June, 1950 in the joint names of himself and the Accountant-General, Federation of Malaya. At the time of the Receiving Order these two deposits remained intact in the Bank of China and had not been applied to meet any commitments to any of Lee Chai Kee's depositors.

It would appear to me that the Accountant-General would not have had any authority to decide whether Lee Chai Kee had failed to discharge any commitment to a depositor and that unless Lee Chai Kee admitted any such failure, the depositor would have had to have taken legal action against Lee Chai Kee and, if successful, apply for an attachment of the deposit. An Adjudication Order having been made against Lee Chai Kee, it appears to me that the remedy of his depositors whose commitments he may have failed to discharge must now be to make a claim in bankruptcy.

In these circumstances I answer the first question which has been submitted to the Court on this notice of motion as follows :—

The two sums of $10,000 and $2,000 deposited in the Bank of China, Kuala Lumpur, by two deposit receipts both dated 30th June, 1950 in the joint names of the bankrupt and the Accountant-General, Federation of Malaya, vest in the Official Assignee for the benefit of the general body of creditors.

I do not propose at this stage to answer the second question submitted to the Court as to whether the bankrupt's depositors are secured creditors or are ordinary creditors in the bankruptcy. If any such depositor wishes to maintain that he is a secured creditor, it is open for him to do so in the bankruptcy. I do not think it would be right for me to express an opinion on this point at this stage which might be adverse to the depositors when none of them is a party to these proceedings.

Order accordingly.

KARTAR SINGH & ANOR. v. REX.

[C. Cr. A. (Murray-Aynsley, C.J. (Singapore), Mathew, C.J. (F.M.) and Knight, J.) March 28, 1952]

[Singapore — Criminal Appeal No. 21 of 1951]

Penal Code, s. 299 — Distinction between effect of direct and circumstantial evidence.

Where there is a direct evidence, however slight, the Jury are entitled to accept it and the case should be left